

Update: Child Protective Proceedings Benchbook (Revised Edition)

CHAPTER 2

Reporting & Investigating Suspected Child Abuse & Neglect

2.18 Access to FIA's Registry

Effective January 3, 2005, 2004 PA 563 amended MCL 722.627(2) by adding a provision that allows the confidential FIA record to be made available to the Foster Care Review Board. At the bottom of page 50, after subsection (r) insert the following quote:

“(s) A foster care review board for the purpose of meeting the requirements of 1984 PA 422, MCL 722.131 to 722.139a.”

“Specified information.”

Effective January 3, 2005, 2004 PA 563 amended MCL 722.622(y). On page 51, replace the quote of MCL 722.622(y) with the following quote:

“‘Specified information’ means information in a children’s protective services case record related specifically to the department’s actions in responding to a complaint of child abuse or neglect. Specified information does not include any of the following:

- (i) Except as provided in this subparagraph regarding a perpetrator of child abuse or neglect, personal identification information for any individual identified in a child protective services record. The exclusion of personal identification information as specified information prescribed by this subparagraph does not include personal identification information identifying an individual alleged to have perpetrated child abuse or neglect, which allegation has been classified as a central registry case.

(ii) Information in a law enforcement report as provided in section 7(8).

(iii) Any other information that is specifically designated as confidential under other law.

(iv) Any information not related to the department's actions in responding to a report of child abuse or neglect.”

CHAPTER 4

Jurisdiction, Venue, & Transfer

4.6 Anticipatory Neglect or Abuse Is Sufficient for Court to Take Jurisdiction of a Newborn Child

On page 95 before the first full paragraph, insert the following text:

In *In re Gazella*, ___ Mich App ___, ___ (2005), the Court of Appeals held that where respondent's parental rights to previous children were involuntarily terminated based upon abandonment and her parental rights to other previous children were voluntarily terminated after child protective proceedings were initiated, it was not error for the court to find jurisdiction based upon the doctrine of anticipatory neglect. The Court rejected the mother's argument that "[p]ast conduct is not a statutory ground for asserting jurisdiction, there must be some current physical harm or threat of serious emotional harm." *Id.* at ___ quoting *Dittrick, supra* and *Powers, infra*.

CHAPTER 17

Permanency Planning Hearings

17.5 Court's Options Following Permanency Planning Hearings

On page 368 before the first full paragraph, insert the following text:

In *In re Gazella*, ___ Mich App ___, ___ (2005), the Court explored the distinction between “physical compliance” with the Case Service Plan and improvement in parenting ability. The Court stated:

“‘Compliance’ could be interpreted as merely going through the motions physically; showing up for and sitting through counseling sessions, for example. However, it is not enough to merely go through the motions; a parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent’s custody. In other words, it is necessary, but not sufficient, to physically comply with the terms of a parent/agency agreement or case service plan. For example, attending parenting classes but learning nothing from them and, therefore, not changing one’s harmful parenting behaviors is of no benefit to the parent or child.

“It could be argued that a parent complied with a case service plan which merely required attending parenting classes but was silent as to the need for the parent to benefit from them. It is our opinion that such an interpretation would violate common sense and the spirit of the juvenile code, which is to protect children and rehabilitate parents whenever possible so that the parents will be able to provide home for their children which is free of neglect or abuse.”

CHAPTER 18

Hearings on Termination of Parental Rights

18.7 Standard and Burden of Proof Required to Establish Statutory Basis for Termination

On page 379 immediately before Section 18.8, insert the following text:

In *In re Gazella*, ___ Mich App ___, ___ (2005), the trial court took jurisdiction over the children and found statutory grounds for termination of the respondent-mother's parental rights to them. The trial court entered two orders. The first order took jurisdiction of the children and required the respondent-mother to comply with the case service plan. The second order terminated the respondent-mother's parental rights to the children; however the court suspended the effect of the termination order contingent on respondent-mother's compliance with all conditions of the case service plan. The agreement to suspend the effect of the termination order to provide the respondent with an opportunity to comply with the case service plan is known as an *Adrianson** agreement. *Adrianson* agreements provide that if a respondent complies with the conditions set by the agreement, usually compliance with the case service plan, then the court would set aside the order terminating the respondent's parental rights. If the respondent fails to comply, then the termination order goes into effect. In *Gazella*, the Court of Appeals held that use of an *Adrianson* agreement violates MCL 712A.19b(5) and MCR 3.977(E), (F)(1), and (G)(3). The Court held:

“The statute and court rule are clear: once the court finds there are statutory grounds for termination of parental rights, the court must order termination of parental rights and must further order that ‘additional efforts for reunification of the child with the parent not be made,’ unless the court finds that termination of parental rights to the child is clearly not in the child’s best interest. . . . Once the statutory grounds for termination have been proven (unless the court finds that termination of parental rights to the child is clearly not in the child’s best interest), the court must terminate parental rights immediately. An *Adrianson* order cannot be entered.” *Gazella, supra* at ___.

**In re Adrianson*, 105 Mich App 300, 319 (1981).

CHAPTER 18

Hearings on Termination of Parental Rights

18.8 Requirements for the “Best Interest” Step

On page 380 before the first paragraph, insert the following text:

*See the update to Section 18.7, above, for explanation of *Adrianson* agreements.

In *In re Gazella*, ___ Mich App ___, ___ (2005), the trial court found statutory grounds for termination of the respondent-mother’s parental rights and entered an order terminating her parental rights. However, pursuant to an *Adrianson* agreement,* the court suspended the effect of the termination order. The Court of Appeals held that the use of *Adrianson* agreements violates MCL 712A.19b(5) and MCR 3.977(E)(3), (F)(1), and (G)(3). *Gazella*, *supra* at ___.

In *Gazella*, at the time it found the statutory grounds for termination existed, the trial court stated:

“Now obviously I have not made findings on best interest because by stipulation any order terminating her parental rights will be suspended to determine whether she is able to and does comply with conditions that may be set.”

The respondent-mother failed to comply with the conditions set, and the trial court entered the order terminating her parental rights without making best interest findings. Although the respondent-mother appealed the termination of her parental rights, she did not raise the issue that the trial court failed to make best interest findings. The Court of Appeals indicated that an argument could be made that the termination order was entered erroneously because the lower court made no best interest findings. The Court of Appeals rejected this argument and stated the following in dicta:

“Neither the statute nor court rule require the court to make specific findings on the question of best interest, although trial courts usually do. In fact, most trial courts go beyond the question of whether termination is clearly not in a child’s best interest and affirmatively find that termination is in a child’s best interest. Such a finding is not required, but is permissible if the evidence justifies it. The statute and court rule provide that once a statutory ground for termination has been established by the requisite standard of proof, the court must enter an order of termination unless the court finds that termination is clearly not in the child’s best interest. If the court makes no finding regarding best interest, then the court has not found that termination would clearly not be in the child’s best interest. While it would be best for trial courts to make a finding that there was insufficient evidence that termination was clearly not in a child’s best interest, it is not required where no

party offers such evidence, as here. In order for a valid termination order to enter, when no evidence is offered that termination is clearly not in the child's best interest, all that is required is that at least one statutory ground for termination be proved."

CHAPTER 18

Hearings on Termination of Parental Rights

18.9 Termination of Parental Rights at Initial Dispositional Hearing

On page 383 immediately before Section 18.10, insert the following text:

**In re
Adrianson*, 105
Mich App 300
(1981). See the
update to
Section 18.7,
above, for more
information on
Adrianson
orders.

In *In re Gazella*, ___ Mich App ___, ___ (2005), the Court of Appeals found that MCR 3.977(E)(3) clearly provides that once the court finds a statutory ground for termination of parental rights, unless the court finds that termination of parental rights to the child is clearly not in the child's best interest, the court must terminate parental rights *immediately*. The Court held that trial courts may not enter *Adrianson** orders, whereby the termination order is suspended in order to provide the respondent with additional time to comply with a case service plan or other conditions.

CHAPTER 18

Hearings on Termination of Parental Rights

18.10 Termination of Parental Rights on the Basis of New or Different Circumstances

On page 384 before the paragraph beginning “**Time requirement for hearing . . .**,” insert the following text:

In *In re Gazella*, ___ Mich App ___, ___ (2005), the Court of Appeals found that MCR 3.977(F)(1) clearly provides that once the court finds a statutory ground for termination of parental rights, unless the court finds that termination of parental rights to the child is clearly not in the child’s best interest, the court must terminate parental rights *immediately*. The Court held that trial courts may not enter *Adrianson** orders, whereby the termination order is suspended in order to provide the respondent with additional time to comply with a case service plan or other conditions.

**In re Adrianson*, 105 Mich App 300 (1981). See the update to Section 18.7, above, for more information on *Adrianson* orders.

CHAPTER 18

Hearings on Termination of Parental Rights

18.11 Termination of Parental Rights in Other Cases

On page 387 immediately before the paragraph beginning “**Time requirement for hearing . . .**,” insert the following text:

In *In re Gazella*, ___ Mich App ___, ___ (2005), the Court of Appeals found that MCR 3.977(G)(3) clearly provides that once the court finds a statutory ground for termination of parental rights, unless the court finds that termination of parental rights to the child is clearly not in the child’s best interest, the court must terminate parental rights *immediately*. The Court held that trial courts may not enter *Adrianson** orders, whereby the termination order is suspended in order to provide the respondent with additional time to comply with a case service plan or other conditions.

**In re Adrianson*, 105 Mich App 300 (1981). See the update to Section 18.7, above, for more information on *Adrianson* orders.